



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211, 212, and 232

RIN 0750-AI13

Defense Federal Acquisition Regulation Supplement: Application of Certain Clauses to Acquisitions of Commercial Items (DFARS Case 2013-D035)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify the applicability of two clauses to acquisitions of commercial items.

DATES: Effective [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Janetta Brewer, telephone 571-372-6104.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the Federal Register at 78 FR 73472 on December 6, 2013, to clarify the applicability of DFARS 252.211-7008, Use of Government-Assigned Serial Numbers, and

DFARS 252.232-7006, Wide Area WorkFlow Payment Instructions, to acquisitions of commercial items. The rule proposed adding these two clauses to the list at DFARS 212.301(f) of solicitation provisions and contract clauses for the acquisition of commercial items and revising the clause prescriptions to require their inclusion in solicitations and contracts for acquisitions using FAR part 12 procedures. One respondent submitted a public comment in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comment in the development of the final rule. There are no changes from the proposed rule in the final rule, except renumbering at 212.301 due to DFARS baseline changes. A discussion of the comment is provided, as follows:

Comment: The respondent stated that the rule appears to be a cost cutting measure that will reduce exploitation of tax monies being used to purchase products for the Government at an inflated rate.

Response: The rule clarifies the applicability of DFARS 252.211-7008 and 252.232-7006 to acquisitions of commercial items.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select

regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and is summarized as follows:

This rule revises DFARS part 212, Acquisition of Commercial Items, to clarify the applicability of DFARS 252.211-7008, Use of Government-Assigned Serial Numbers, and DFARS 252.232-7006, Wide Area WorkFlow Payment Instructions, to acquisitions of commercial items.

This final rule applies to contractors, regardless of size or business ownership, when responding to DoD solicitations or being awarded contracts that are acquired utilizing FAR part 12 procedures. The rule is not expected to have a significant impact on small entities as it merely clarifies the use of two

DFARS clauses. The final rule is expected to have a slightly positive impact because the additional clarity will help contracting officers and small businesses better understand DoD's requirements.

No public comments were received in response to the initial regulatory flexibility analysis. The rule does not contain any reporting or recordkeeping requirements and does not require contractors to expend significant cost or effort. There are no known significant alternatives to the rule that would further minimize any economic impact of the rule on small entities

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 211, 212, and 232

Government procurement.

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Deputy, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 211, 212, and 232 are amended as follows:

1. The authority citation for 48 CFR parts 211, 212, and 232 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 211—DESCRIBING AGENCY NEEDS

2. In section 211.274-6, paragraph (c) introductory text is revised to read as follows:

211.274-6 Contract clauses.

* * * * *

(c) Use the clause at 252.211-7008, Use of Government-Assigned Serial Numbers, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that—

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PART 212—ACQUISITION OF COMMERCIAL ITEMS

3. Amend section 212.301 by—

a. Redesignating—

i. Paragraphs (f)(lii) through (lxx) as (f)(liv) through (lxxii);

ii. Paragraphs (f)(xv) through (li) as (f)(xvi) through (lii);
and

b. Adding new paragraphs (f)(xv) and (liii).

The additions read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(xv) Use the clause at 252.211-7008, Use of Government-
Assigned Serial Numbers, as prescribed in 211.274-6(c).

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(liii) Use the clause at 252.232 -7006, Wide Area WorkFlow
Payment Instructions, as prescribed in 232.7004(b).

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PART 232—CONTRACT FINANCING

4. In section 232.7004, revise the section heading and
paragraph (b) to read as follows:

232.7004 Contract clauses.

* * * * *

(b) Use the clause at 252.232-7006, Wide Area WorkFlow Payment
Instructions, in solicitations and contracts, including
solicitations and contracts using FAR part 12 procedures for the
acquisition of commercial items, when 252.232-7003 is used and
neither 232.7003(b) nor (c) apply. See PGI 232.7004 for
instructions on completing the clause.